



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO The Board of Environmental Protection
FROM Mark Stebbins, Bureau of Land & Water Quality
RE Administrative Consent Agreement with Goldmark, LLC
DATE May 1, 2008

.....
Statute and Rule Reference: *The Performance Standards for Excavations*, 38 M R S A §490-D, establish the operating requirements for gravel pits. Section 490-D(8) of those standards states, in pertinent part, that the working pit cannot exceed 10 acres unless a variance is obtained from the Department.

Location: Sanford, Maine

Description: On September 17, 2007, Department staff determined through the use of aerial photographs and ground survey equipment that the gravel pit owned and operated by Goldmark, LLC had a working pit area that measures more than 20 acres in size. A review of Department records reveals that a variance had not been obtained for this activity.

Environmental Issues: Gravel pits have the potential to create erosion and sedimentation problems from uncontrolled runoff, groundwater pollution from fuel spills and equipment leaks, air pollution from uncontrolled dust sources, noise pollution, and safety concerns from steep unstable slopes. These concerns are addressed by operating a pit in compliance with the Department's Performance Standards for Excavations.

On January 10, 2008, Goldmark, LLC submitted a variance application (#L-24123-80-A-N) to operate a working pit larger than 10 acres. On January 17, 2008, the Department accepted the variance application for processing. The application is currently under review.

Department Recommendation: The Department recommends acceptance of this Agreement, which stipulates that Goldmark, LLC pay a monetary penalty of \$4,500.00, which has been paid. The Agreement also requires that Goldmark LLC abide by all terms and conditions of approval, if the variance is approved, or reduce the size of the operating pit if it is denied. The penalty is based on the Department's penalty policy reflecting the size and foreseeability of the violation.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX (207) 287-7826
RAY BLDG, HOSPITAL ST

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX (207) 760-3143



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF

GOLDMARK, LLC) ADMINISTRATIVE CONSENT
SANFORD, YORK, MAINE) AGREEMENT
MINING) 38 M R S A §347-A
2007-249-L)

This Agreement by and among Goldmark, LLC, the State of Maine, Department of the Attorney General ("AG"), as approved by the Maine Board of Environmental Protection ("Board"), is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M R S A § 347-A(1)

The parties agree as follows

- 1 Goldmark, LLC owns a parcel of land adjacent to Route 4 in Sanford, Maine as described and recorded in Book #2206 on Page #169 of the York County Registry of Deeds.
2. Goldmark, LLC is a Maine Limited Liability Company authorized to conduct business in Maine and which operates a gravel mining business on the property described in Paragraph 1 of this Agreement Dana Goldberg and Mark O'Brien are managing members of Goldmark, LLC
3. On January 16, 2004, Goldmark, LLC submitted a "Notice of Intent to Comply" pursuant to the *Performance Standards for Excavations*, 38 M R S A § 490-C to mine on the property described in Paragraph 1 of this Agreement
- 4 On September 13, 2007, Department staff determined through the use of aerial photographs and ground survey equipment that Goldmark, LLC's gravel pit located on the property described in Paragraph 1 of this Agreement had a working pit area that measured more than 20 acres in size Under the *Performance Standards for Excavations*, 38 M R S A §490-D(8), the working pit cannot exceed 10 acres unless a variance is obtained from the Department A review of Department records revealed that a variance had not been obtained for this activity
- 5 By operating a gravel pit such that the working pit is larger than 10 acres without first obtaining a variance, Goldmark, LLC violated the *Performance Standards for Excavations*, 38 M R S A § 490-D(8)

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7686 FAX (207) 287 7826
RAY BLDG, HOSPITAL ST

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX (207) 760-3143

IN THE MATTER OF

GOLDMARK, LLC
SANFORD, YORK, MAINE
MINING

) ADMINISTRATIVE CONSENT
) AGREEMENT
) 38 M R S A §347-A)

- 6 On October 25, 2007, the Department issued a Notice of Violation to Goldmark, LLC for the violation described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M R S A § 347-A(1)(B)
- 7 On November 15, 2007, Goldmark, LLC notified the Department by letter that approximately 5 acres of the active pit area was loamed and seeded
- 8 On January 10, 2008, Goldmark, LLC submitted a variance application (#L-24123-A-N) to operate a working pit larger than 10 acres. On January 17, 2008, the Department accepted the variance application for processing.
- 9 The Department has regulatory authority over the activities described herein
- 10 This Agreement shall become effective only if it is accepted by the Board and approved by the Attorney General
- 11 To resolve the violation referred to in Paragraphs 4 and 5 of this Agreement, Goldmark, LLC agrees to
 - A If after-the-fact application #L-24123-A-N is approved by the Department, immediately comply with all terms and conditions of the after-the-fact permit, or

If after-the-fact application #L-24123-A-N is wholly or in part denied, returned, or withdrawn, within 30 days of denial, return, or withdrawal, submit a restoration plan to the Department that describes the necessary measures to reduce the size of the working pit to less than 10-acres. The restoration plan is subject to review and approval by Department staff and must include a specific time schedule for the completion of all phases of the restoration. Implement the plan in accordance with the schedule contained therein.
 - B Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for each violation of any provision of this Consent Agreement
 - C Pay to the Treasurer, State of Maine, upon signing this Agreement, the sum of four thousand five hundred dollars (\$4,500.00) as a civil monetary penalty

IN THE MATTER OF

GOLDMARK, LLC
SANFORD, YORK, MAINE
MINING

) ADMINISTRATIVE CONSENT
) AGREEMENT
) 38 M R S A §347-A)

- 12 The Board and the State of Maine Attorney General grant a release of their cause of action against Goldmark, LLC for the specific violation listed in Paragraphs 4 and 5 of this Agreement on the express condition that all actions listed in Paragraph 11 above are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective unless and until these conditions are satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages

GOLDMARK, LLC

BY 
DANA GOLDBERG, MANAGING MEMBER

DATE 3/31/08

BY 
MARK O'BRIEN, MANAGING MEMBER

DATE 3/31/08

BOARD OF ENVIRONMENTAL PROTECTION

BY _____ DATE _____
VIRGINIA PLUMMER, CHAIR

SEEN AND AGREED TO
STATE OF MAINE

BY _____ DATE _____
MARGARET A BENSINGER, ASSISTANT ATTORNEY GENERAL